

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

CRUISE LINES INTERNATIONAL	)	
ASSOCIATION ALASKA and CRUISE	)	
LINES INTERNATIONAL ASSOCIATION,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
THE CITY AND BOROUGH OF JUNEAU,	)	
ALASKA, a municipal corporation, and	)	
RORIE WATT, in his official capacity as	)	
City Manager,	)	
	)	
Defendants.	)	
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No. 1:16-cv-0008-HRH

ORDER

Case Status

By order of December 6, 2018,<sup>1</sup> the court ruled upon defendants' motion to determine law of the case and the parties' cross-motions for summary judgment. By case status order of December 6, 2018,<sup>2</sup> the court further advised the parties of its perception that what remained to be done in this case was the entry of a declaratory judgment, and that injunctive relief at this time was unnecessary. However, the court requested to be advised if the parties felt that there were issues which remained to be resolved. Defendants responded, suggesting that there were no further issues to be resolved and that

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<sup>1</sup>Docket No. 207.

<sup>2</sup>Docket No. 208.

a declaratory judgment should be entered.<sup>3</sup> Plaintiffs responded with a notice of issues that remained to be resolved.<sup>4</sup> The court advised the parties that it would treat defendants' request as a motion and solicited a reply from defendants with respect to the plaintiffs' notice.<sup>5</sup>

Defendants argue that plaintiffs' notice to the court is an impermissible motion for reconsideration.<sup>6</sup> Not so. Rather, plaintiffs' notice suggests that the court's December 6, 2018, order does not go far enough. Plaintiffs argue that "[a]ny declaratory judgment in this action should apply the legal principles established in the [c]ourt's December 6 ruling to the facts (as determined by the [c]ourt)[.]"<sup>7</sup> Plaintiffs "urge the [c]ourt to provide express identification of uses or categories of uses of the Entry Fees that are impermissible and to issue injunctive relief against continued unlawful activity by [d]efendants."<sup>8</sup> Defendants argue that injunctive relief would be inappropriate because no such motion is before the court and that the court has already held that it does not have "sufficient evidence to decide on the constitutionality of any given expenditure."<sup>9</sup>

Even though what is presently before the court is deemed not to be a motion for reconsideration, the court has seriously reevaluated the question of whether the

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<sup>3</sup>Docket No. 210.

<sup>4</sup>Docket No. 211.

<sup>5</sup>Docket No. 212.

<sup>6</sup>Reply in Support of Request for Entry of Final Judgment at 2, Docket No. 213.

<sup>7</sup>Plaintiffs' Notice to Court of Issues that Remain to be Resolved at 3, Docket No. 211.

<sup>8</sup>Id. at 4.

<sup>9</sup>Reply in Support of Request for Entry of Final Judgment at 3, Docket No. 213, referring to Order at 33 (Dec. 6, 2018), Docket No. 207.

December 6, 2018, order should have gone further in an effort to guide the parties' future conduct. There are two problems here.

First, the court's December 6 order was expressly "forward-looking."<sup>10</sup> The constitutionality and legality of defendants' prior expenditures of fees collected from defendants was not an issue because plaintiffs were not seeking a refund. That necessarily meant that the court's focus was, as stated above, forward-looking. But, looking to the future, the court has no way of knowing what projects and/or expenses defendants will approve for the 2019 tourist season.<sup>11</sup> Injunctive relief prohibiting specific expenditures in 2019 is not possible on the present record.

Second, as plaintiffs recognize,<sup>12</sup> federal courts often decline, prudentially, to accompany declarations of unlawfulness with injunctive relief. Doran v. Salem Inn, Inc., 422 U.S. 922, 930-31 (1975). Plaintiffs recognize that state and local governments can usually be expected to respect and follow declarations of law. Poe v. Gerstein, 417 U.S. 281 (1974). Plaintiffs would have the court depart from the norm and enter an injunction in this case. The court declines to do so. The exchange of communications between counsel subsequent to the December 6 decision gives the court some courage to believe that the parties will take seriously the court's admonition that fees collected from

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<sup>10</sup>Order at 33 (Dec. 6, 2018), Docket No. 207.

<sup>11</sup>Throughout these proceedings, defendants have argued that plaintiffs must identify the expenditures that plaintiffs challenge. True as that must be, until defendants have identified the projects and expenses which they would fund with the fees collected from plaintiffs' vessels, plaintiffs have no basis for deciding what to challenge. Defendants' June 4, 2018, Biennial (2019, 2020) Budget, Docket No. 211-3, does not adequately identify the projects and expenses which defendants will fund with PDF and MPF fees in 2019 because that budget predates the court's December 6, 2018, order.

<sup>12</sup>Plaintiffs' Notice to Court of Issues that Remain to be Resolved at 4, Docket No. 211.

plaintiffs' vessels must only be expended upon projects and for services that benefit the vessels. In this regard, defendants' counsel advises somewhat ambiguously in his January 8, 2019, letter: "[c]onsistent with the Decision, the City will follow its code, held to be constitutional[.]"<sup>13</sup> The court has indeed held that the ordinance and resolution upon which defendants' fees are authorized are facially constitutional. But the fees collected by defendants must also be constitutionally and lawfully expended; and, as to the latter, the court trusts that defendants will not invite further litigation by collecting and expending fees during 2019 in ways inconsistent with the December 6, 2018, order.

In their notice, plaintiffs contend that defendants must account for state marine passenger fees which they receive. The potential interaction between defendants' MPF and PDF on the one hand, and the state commercial passenger vessel tax on the other hand, is not relevant to the issues presented by the parties' motions and decided by the December 6, 2018, order.<sup>14</sup>

Plaintiffs contend that the court should address the question of whether cruise vessels using private docks should pay the same fees as vessels using public docks. That issue may have been suggested by the parties' cross-motions for summary judgment, but it was not adequately briefed. The court did not address this issue in its December 6 order, and declines to do so now.

Finally, plaintiffs contend that they are entitled to attorney fees and expenses.<sup>15</sup> The court declines to make any ruling regarding entitlement to attorney fees until after

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<sup>13</sup>Docket No. 211-2.

<sup>14</sup>Docket No. 207.

<sup>15</sup>Plaintiffs' Notice to Court of Issues that Remain to be Resolved at 17, Docket No. 211.

judgment has been entered and an appropriate motion for attorney fees and expenses is filed pursuant to Rule 54(d), Federal Rules of Civil Procedure, and Local Civil Rule 54.2.<sup>16</sup>

Treating defendants' request for judgment<sup>17</sup> as a motion to enter a declaratory judgment, that motion is granted. Plaintiffs' request,<sup>18</sup> that the court extend its December 6 order by entering an injunction, is denied.

DATED at Anchorage, Alaska, this 24th day of January, 2019.

/s/ H. Russel Holland  
United States District Judge

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<sup>16</sup>See Local Civil Rule 54.1 as regards the taxation of costs.

<sup>17</sup>Docket No. 210.

<sup>18</sup>Docket No. 211.